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MAGISTRATE JUDGE PAYNE

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and (2) because the Bankruptcy Court is already deciding this same issue as to two agencies of the Louisiana State Government. In so ruling, Judge Payne granted Crystal the right to adjudicate, as a threshold matter, whether it need have any further participation in ARCO's CERCLA Claim concerning a mine that Crystal never owned, which ARCO knew needed to be cleaned up when it bought it in 1980 from Crystal's subsidiary (CEPCO) and contractually assumed liability to clean it up, and about which ARCO made no mention when it filed a proof of claim in Crystal's 1986 bankruptcy case.

The foundation for Judge Payne's ruling concerning transfer of the Contract Release Claim and the CERCLA Counter-Claim is his presumption that the Bankruptcy Discharge Issue applied to both Crystal and CEPCO and that it would be resolved at the threshold before any further proceedings on the Contract Release Claim or the CERCLA Counter-Claim. "Presumably, the action transferred to Colorado will proceed to the merits only if the Bankruptcy Court determines that ARCO's claims have not been discharged." Memorandum at p. 13.

Unfortunately, Judge Payne's "presumption" was based on two clearly erroneous conclusions concerning the relationships between the Bankruptcy Discharge Issue, the Contract Release Claim and the CERCLA Counter-Claim:

- That the Bankruptcy Discharge Issue applies to both Crystal and CEPCO (in fact it does not)^{2/} and that CEPCO's Contract Release Claim was only brought as an "alternative" to the Bankruptcy Discharge Issue (Memorandum at p. 1) (in fact it is CEPCO's counterpart to Crystal's Bankruptcy Discharge Issue); and

^{2/}In taking this position Crystal and CEPCO assume that they are not alter egos of one another. ARCO has not pled alter ego.

- That ARCO would not go forward on either the Contract Release Claim or the CERCLA Counter-Claim unless and until the merits of the Bankruptcy Discharge Issue had been adjudicated (Memorandum at p. 13).

In fact, ARCO has shown it will go forward, if permitted by this Court, on both these issues as to both Crystal and CEPCO, while Bankruptcy Judge Callaway is deciding the Bankruptcy Discharge Issue. Indeed, ARCO has expressed a desire, in its Memorandum Opposing Appeal of Plaintiffs From Memorandum Ruling Concerning Transfer of Contract Release Claim and CERCLA Counterclaim to Colorado ("ARCO's Memorandum in Opposition"), to go forward immediately with its CERCLA Counter-Claim against Crystal and to try to render completely meaningless any decision Bankruptcy Judge Callaway makes on the Bankruptcy Discharge Issue.

Furthermore, the Magistrate Judge committed the following clear error that requires reversal in weighing the factors necessary to make a transfer of venue under 28 U.S.C. § 1404(a):

- Finding that "none of the facts involved in the underlying dispute occurred in [the Western District of Louisiana]", so as to minimize the deference paid to plaintiffs' choice of forum (Memorandum at p. 15), when both Crystal and CEPCO are headquartered in Shreveport and the Purchase Agreement was initially negotiated and signed in Shreveport;
- Applying an erroneous legal standard in evaluating the sufficiency of ARCO's affidavit concerning potential witnesses and the substance of their testimony (Memorandum at p. 15) because ARCO named only "possible" witnesses who "might" be required to testify and wholly failed to state the "key" witnesses and the substance of any witness' anticipated testimony; and
- Considering ARCO's wholly unsupported claim that it cannot obtain jurisdiction in this District over additional parties that it wants to add (Memorandum at p. 17), because ARCO had admitted that those parties were not necessary in this case, an admission that ARCO has now repeated in its briefing to this Court.

I. Interests of Justice

In proposing transfer to Colorado of the Contract Release Claim and the CERCLA Counter-Claim, the Memorandum commits clear error in assuming, but not ordering, that after transfer those claims will be handled in a way that will not interfere with the Louisiana Bankruptcy Court's resolution of the Bankruptcy Discharge Issue and in an efficient sequence. Indeed, it might not be possible to assure such non-interference if these matters are transferred out of the District where the Bankruptcy Court is deciding the Bankruptcy Discharge Issue.

Although ARCO asserts in its Memorandum in Opposition that "plaintiffs' concern [of interference with the Bankruptcy Court's decision] is entirely illusory," ARCO's own brief evidences the danger in the Magistrate Judge's making such an assumption. First, ARCO concedes that the only reason that there is "no current prospect" that ARCO's CERCLA Counter-Claim against Crystal will proceed is because "the Order of Transfer pertaining to the contract and CERCLA claims is stayed pending this appeal." ARCO's Memorandum in Opposition at p. 2. Obviously, without this appeal, plaintiffs' concern is far from "illusory."

In fact, ARCO's Memorandum in Opposition demonstrates that it intends to proceed immediately against Crystal on the CERCLA Counter-Claim in Colorado, regardless of what rulings are made by the Bankruptcy Judge. ARCO has demonstrated that no matter what findings are made on the Bankruptcy Discharge Issue, ARCO will deem them irrelevant to their claims against Crystal, asserting (without any legal support) that it has "independent basis to support ARCO's CERCLA counterclaim against Crystal, notwithstanding the outcome of the Bankruptcy Discharge Claim." ARCO's Memorandum in Opposition at p. 3 (emphasis in original). Clearly, this is the opposite of what the Magistrate Judge "presumed" would occur.

It is the Bankruptcy Court, not a district court in Colorado, that should entertain ARCO's notion that it can assert claims against Crystal in Colorado "notwithstanding the outcome of the Bankruptcy Discharge Claim" because that issue goes to the extent and reach of Crystal's discharge in bankruptcy. By creating the possibility that the opposite could occur, Judge Payne's transfer order is clearly erroneous. Indeed, the Transfer Order has given ARCO the opportunity to develop a strategy to try to make a nullity of any adverse decision ARCO might receive from Bankruptcy Judge Callaway on the Bankruptcy Discharge Issue. It is, therefore, extremely important that this Court retain and resolve the Contract Release Claim and retain the CERCLA Counter-Claim (at least for now), so that ARCO cannot achieve a result that is completely contrary to what the Magistrate Judge assumed when he reached his conclusion to transfer.

Furthermore, contrary to the erroneous statement in the Magistrate Judge's Memorandum, the Bankruptcy Discharge Issue does not apply to CEPCO. The Memorandum assumes, incorrectly, that the CEPCO Contract Release Claim is an "alternative" to the Bankruptcy Discharge Claim. ARCO's Memorandum in Opposition at p. 1. Instead, the Contract Release Claim is CEPCO's counterpart to the Bankruptcy Discharge Issue as to Crystal. Based on this erroneous conclusion, the Magistrate Judge "presumed" that the Contract Release Claim would not proceed unless and until the Bankruptcy Discharge Issue is resolved in ARCO's favor. Memorandum at p. 13. Again, ARCO, in its Memorandum in Opposition, made it very clear that it will not honor the intent of the Memorandum. ARCO's Memorandum in Opposition at p. 3 (asserting that proceeding in Colorado would not interfere with the Bankruptcy Discharge Issue because "ARCO's counterclaim against [CEPCO] is unaffected by the bankruptcy.").

Like the Bankruptcy Discharge Issue as to Crystal, the Contract Release Claim provides a basis for an initial determination of CEPCO's liability on a complicated CERCLA Claim

before CEPCO is put to burdensome defense of the claim. This Court should decide this issue here first because it will lead to an efficient and expeditious determination of the case. This issue is presented squarely by the Complaint and in CEPCO's Motion for Summary Judgment, and can be decided as well by this Court as any other, as acknowledged by the Magistrate Judge in his Memorandum. Memorandum at p. 16, fn 5. For that reason, ARCO did not meet its heavy burden of proving that transfer of this matter was warranted, and the Magistrate Judge committed clear error in finding that it did.

II. Deference to Plaintiffs' Choice of Forum

The Magistrate Judge committed clear error in finding that none of the underlying events which form the basis of the controversy occurred in Louisiana, and compounded his error by refusing to afford deference to plaintiffs' forum choice. Memorandum at p. 15 ("The plaintiff's choice of forum is entitled to less deference when none of the facts involved in the underlying dispute occurred in that district."). Instead, plaintiffs' forum choice should have been accorded substantial weight because the plaintiffs brought their cause of action in their home forum, and the cause of action has significant connection to that forum. Indeed, ARCO came to Shreveport, Louisiana and obtained Crystal's signature on the contract that created the transaction at issue here.

Contrary to ARCO's assertion in its Memorandum in Opposition at p. 6, both plaintiffs and defendant have acknowledged in prior briefing that the contracts reflecting CEPCO's sale of the Rico Mine to Anaconda (now ARCO) are central to this dispute. *See, e.g.*, ARCO's Memorandum in Support of Motion to Transfer Case to United States District Court for the District of Colorado ("ARCO's Venue Memorandum") at p. 1 and Exhibit 2. ARCO concedes that the Purchase Agreement reflecting the sale was executed in Louisiana. Memorandum in

Opposition at p. 5. The Purchase Agreement was supplemented by the Closing Agreement, which contains the language releasing CEPCO from environmental liabilities. ARCO's Venue Memorandum at p. 1.^{3/} Based on these admitted facts, the Magistrate Judge should have afforded plaintiffs' forum choice substantial deference, and his failure to do so was clearly erroneous.

III. ARCO's Failure To Meet Its Burden

The Magistrate Judge also applied the wrong legal standard when considering the "convenience of the parties" factor under 28 U.S.C. § 1404(a), by relying on ARCO's affidavit listing 52 "possible witnesses," and therefore committed a clear error of law. Memorandum at p. 15 ("ARCO has identified 52 potential witnesses and provided a summary of the reason why each might be required to testify at trial") (emphasis added). When a party seeks to transfer venue on the basis of witnesses' convenience, "the factual content of a supporting affidavit is very important," and it is the burden of the movant "to clearly specify key witnesses" who will be appearing and to describe their anticipated testimony with specificity so that the court can measure the inconvenience caused by locating a lawsuit in a particular forum. *Factors, Etc., Inc. v. Pro Arts, Inc.*, 579 F.2d 215, 218 (2d Cir. 1978), *cert. denied*, 440 U.S. 908 (1979)

^{3/}ARCO's assertion that the Purchase Agreement is "not even germane" (ARCO's Memorandum in Opposition at p. 6) is not supported or consistent with its earlier briefing in this case. It is the Purchase Agreement, executed in Louisiana, that forms the basis of ARCO's assertion that Colorado law governs in this lawsuit, an allegation that the Magistrate Judge relied upon in transferring the CERCLA Counter-Claim and the Contract Release Claim to Colorado. Memorandum at p. 17.

ARCO's argument that this Court should not consider the location of execution of the Purchase Agreement because the Purchase Agreement was not "cited in . . . plaintiffs' Complaint" is even less persuasive. ARCO's Memorandum in Opposition at p. 6. The fact that plaintiffs did not expressly cite to the Purchase Agreement in the Complaint is of no consequence under the notice pleading standards of Federal Rule of Civil Procedure 8. By contrast, the Purchase Agreement and the Closing Agreement are one exhibit to Crystal's summary judgment motion.

(emphasis added); *Texas Gulf Sulphur Co. v. Ritter*, 371 F.2d 145, 148 (10th Cir. 1967) (supporting affidavit is insufficient if it contains only conclusions without "fully set[ting] out the testimony of the proposed witness so as to enable the trial judge to pass on the materiality of such proposed testimony."). The moving party must make "a specific showing of the necessary witnesses and what the witnesses' testimony will be," and "if the moving party merely makes a general allegation that witnesses will be necessary, without identifying those necessary witnesses and indicating what their testimony at trial will be, the motion to transfer based on convenience of witnesses will be denied." *Factors, Etc.*, 579 F.2d at 218; *Crawford & Co. v. Temple Drilling Co.*, 655 F. Supp. 279, 287 (M.D. La. 1990) (emphasis added).

ARCO's affidavit in support of its Motion to Transfer Venue, attached hereto as Exhibit A, containing only "bold assertions" falls well short of the standards required under a § 1404(a) analysis for the reasons set forth in detail in plaintiffs' original appeal memorandum at pp. 9-10. *Clark v. Moran Towing & Trans. Co.*, 738 F. Supp. 1023, 1036 (E.D. La. 1990) ("bold assertions" will not suffice). In its Memorandum in Opposition at p. 7, ARCO makes the unsupported assertion that the affidavit does meet the legal standard, even though the affidavit wholly fails to identify which of the 52 "possible witnesses" (some of which are outside Colorado) are likely to be key witnesses, and even though it only identifies the nature of such witnesses' subject matter in a conclusory fashion, instead of the "substance" of the possible witnesses' testimony.

For example, ARCO identifies plaintiffs' first "possible" witness as Ed Savelson, who might reside in Denver, Colorado, in the following conclusory fashion: "Mr. Savelson was a land man for Anaconda who worked on title and property issues and has familiarity with the Rico Site." ARCO admits in its affidavit that it has not even verified where Mr. Savelson

resides: "[his] exact address [is] unknown at this time." It is hard to imagine that Mr. Savelson is a "key" witness when ARCO has not, to date, even spoken to him or located his whereabouts.

Each of ARCO's "possible" witnesses are identified in this same conclusory and meaningless way. Based upon such vague and general information, it was impossible for the Magistrate Judge to conclude that key witnesses reside in Colorado, since some of ARCO's 52 "possible witnesses" reside outside Colorado. It was further impossible for the Magistrate Judge to pass on the materiality of the proposed witnesses' testimony, because ARCO did not even attempt to describe the substance of the witnesses' testimony. Therefore, ARCO's affidavit is legally insufficient on its face, and it was clear error for the Magistrate Judge to consider and rely on it.

IV. Personal Jurisdiction Concerning The CERCLA Counter-Claim

In its Memorandum in Opposition, ARCO concedes that its claim "does not require the presence of third parties." ARCO's Memorandum in Opposition at p. 9. Although ARCO, in its venue briefing, repeatedly emphasized and threatened the need for an expensive multi-party cost recovery action in Colorado, it now for the first time concedes that not only are the third parties unnecessary, their presence in the lawsuit is not an important factor to consider in this case. ARCO's Memorandum in Opposition at p. 9. Notwithstanding this current admission, ARCO did ask the Magistrate Judge to consider the need for third parties in its venue briefing, and the judge did consider it in his ruling. Memorandum at p. 17. Therefore, the Magistrate Judge committed clear error by accepting and placing any reliance on ARCO's unsupported assertion that it cannot obtain jurisdiction in Louisiana over other parties it might want to add to its CERCLA Counter-Claim. Memorandum at pp. 17-18.

CONCLUSION AND PRAYER FOR RELIEF

This Court should reverse the Order of Transfer and should keep control of (1) CEPCO's Contract Release Claim (which it can decide on summary judgment either simultaneously with, or after, the Bankruptcy Court rules on the Bankruptcy Discharge Claim) and (2) ARCO's CERCLA Counter-Claim (which it can hold in abeyance while the Bankruptcy Discharge Claim and the Contract Release Claim are decided), then consider transferring to Colorado whatever remains of this case.

FULBRIGHT & JAWORSKI L.L.P.

By: Osborne J. Dykes, III *by Allan D. Lewis*
wife permission

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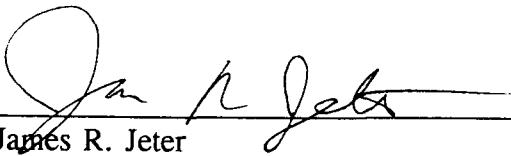
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**ATTORNEYS FOR PLAINTIFFS,
CRYSTAL OIL COMPANY AND CRYSTAL
EXPLORATION AND PRODUCTION COMPANY**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that in compliance with the Federal Rules of Civil Procedure, on this 13th day of September, 1996, a copy of the above and foregoing has been served on counsel for Defendant, Atlantic Richfield Company, by placing a copy of same in the United States mail, properly addressed and with adequate postage affixed thereon to:

1. M. W. Michael Adams
Blanchard, Walker, O'Quin & Roberts
P. O. Box 1126
Shreveport, Louisiana 71163-1126
2. Mr. Roger L. Freeman
Davis Graham & Stubbs, L.L.C.
370 Seventeenth Street, Suite 4700
Denver, Colorado 80202
3. Mr. Lary D. Milner
Senior Counsel, ARCO
Legal Department
555 Seventh Street
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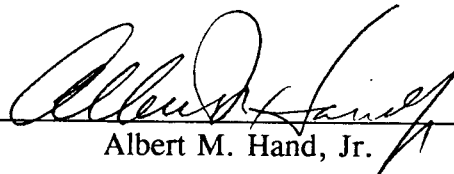

Albert M. Hand, Jr.

EXHIBIT "A"

STATE OF COLORADO)
CITY AND) ss.
COUNTY OF DENVER)

Lary D. Milner, being first duly sworn, states as follows:

I am over 21 years of age, have never been convicted of a felony or crime of moral turpitude, and am fully competent to make this affidavit. All the statements made in this affidavit are true to my personal knowledge based on the preliminary inquiry conducted to date.

I am an attorney and I served as an attorney for Atlantic Richfield Company ("ARCO") from 1982 to 1995, most recently as senior counsel, and am currently retained by ARCO as senior legal consultant. I have been admitted to practice as an attorney since 1972. I have personally handled legal aspects of the Rico Site disposition as well as post-sale title issues. I have had oversight responsibilities for the Anaconda/ARCO legal records, including all those pertaining to the Rico Site located in ARCO's Denver office. I reside in Golden, Colorado.

ARCO has made no final decision on what parties to call as witnesses, and the listing of the following names and possible areas of testimony is done strictly for purposes of ARCO's Motion to Transfer Venue and does not waive any privileges or claims of privilege that may exist. Likewise, the listing of potential sources of documentary evidence does not waive any privileges or claims of privilege that may exist. ARCO preserves all rights with respect to the naming of witnesses and development of testimony.

The following potential witnesses are provided to demonstrate the significant numbers of Colorado-based individuals required to testify on the contractual and bankruptcy declaratory judgment claims raised by Crystal Oil Company and Crystal Exploration and Production Company and the CERCLA cost recovery claims raised by ARCO. Additional witnesses will likely be required, particularly as the case escalates to include other parties such as NL Industries, Inc. After reviewing the claims at issue and upon a review of certain documents, I have identified the following specific individuals as potential witnesses and I have identified the general topics of their testimony. Specific addresses and information have been supplied where known, but due to the preliminary stage of this litigation, ARCO has not discovered specific addresses for all parties at this time. For certain parties, the last known location is specified.

POSSIBLE WITNESSES

Primarily Former ARCO or Anaconda Employees with Knowledge of the Rico Site, Including its Conveyance From Crystal Exploration to Anaconda, Crystal's Bankruptcy Claim and the Ongoing Voluntary Cleanup of the Site Under Colorado Law:

1. Ed Savelson -- Retired Anaconda Employee in the Land Department, residing in the Denver, Colorado metropolitan area, but exact address unknown at this time. Mr. Savelson was a land man for Anaconda who worked on title and property issues and has familiarity with the Rico Site.
2. Bob Gwilym -- Retired Anaconda Employee, retired in Colorado, but present address unknown at this time and presumed remaining in Colorado. Mr. Gwilym was involved with the NPDES permitting issues raised in this case and would be expected to testify about the NPDES permit at issue as well as water quality matters generally at the Rico Site at the time of the conveyance.
3. John Whyte -- Retired Anaconda HSE Employee, retired in Colorado, but present address unknown at this time and presumed remaining in Colorado. Mr. Whyte was employed in the Health, Safety and Environment Department and would be expected to testify concerning environmental evaluations of the Rico Site in the 1980s. These matters directly impact plaintiffs' bankruptcy claim.
4. Larry Barrett -- Retired Anaconda Employee, retired in Colorado, but present address unknown at this time and presumed remaining in Colorado. Mr. Barrett served in the engineering department and would be expected to testify concerning various engineering studies and assessments of the Rico Site relevant to plaintiffs' bankruptcy claim and other legal issues.
5. Chris Garlasco -- Former Anaconda/ARCO Employee, residing in the Denver, Colorado metropolitan area, but exact address unknown at this time. Ms. Garlasco acted as project manager at the Rico Site in the early 1980s and would be expected to testify concerning a host of Rico Site issues including environmental conditions at the Rico Site as well as to ARCO's lack of knowledge that the Rico Site was subject to CERCLA in the 1980s.
6. Marian Fournier -- Retired Anaconda Employee, residing in the Denver, Colorado metropolitan area, but exact address unknown

at this time. Ms. Fournier worked in the geology department and was involved in permitting and geological issues at the Rico Site, and she would be expected to testify concerning such matters.

7. Douglas V. Johnson -- Former Anaconda Employee and Current ARCO Employee, residing in Anchorage, Alaska. Mr. Johnson served as in-house legal counsel in drafting and advising on the Crystal Exploration/Anaconda conveyance documents. Mr. Johnson would be expected to testify concerning the intent of ARCO in drafting these documents and specifically about ARCO's intent with respect to the provisions relied on by plaintiffs.
8. Kim Penoyer -- Retired Anaconda/ARCO Employee, residing in the Denver, Colorado metropolitan area, but exact address unknown at this time. Ms. Penoyer worked in the land department on conveyances and tracking title for dispositions. Ms. Penoyer would be expected to testify about the history of the chain of title at the Rico Site relevant to ownership, liability and related issues.
9. Ed Brinley -- Retired Anaconda Employee, retired in Colorado, but present address unknown at this time and presumed remaining in Colorado. Mr. Brinley was employed in the land department and would be expected to testify concerning issues surrounding Anaconda's acquisition of the Rico Site.
10. Mickey Love -- Retired Anaconda/ARCO Employee, residing in the Denver, Colorado metropolitan area, but exact address unknown at this time. Ms. Love worked in the land department where he addressed title issues and conveyances at the Rico Site. Ms. Love would be expected to testify about the evolution of such title issues at the Rico Site relevant to ownership, liability and related issues.
11. Mike Brotzman -- Retired Anaconda Employee, residing in the Denver, Colorado metropolitan area, but exact address unknown at this time. Mr. Brotzman was a geologist for Anaconda and is familiar with the Rico Site.
12. Robert Dunlap -- Retired Anaconda Employee, residing in Evergreen, Colorado, but exact address unknown at this time. Mr. Dunlap worked in the land department and helped to negotiate the sale of the Rico Site to the Rico Development Corporation. Mr. Dunlap would be expected to testify concerning this transaction.
13. John Wilson -- Retired Anaconda Employee, residing in the Denver, Colorado metropolitan area, but exact address unknown

at this time. Mr. Wilson was a geologist and played a key role in the exploration program at the Rico Site prior to and following the acquisition. Mr. Wilson would be expected to testify about conditions at the Rico Site before and after the acquisition.

14. Richard Krablin -- Former Anaconda Employee, residing in Pennsylvania. Mr. Krablin acted as the head of the Health, Safety and Environment Department and played a key role in compliance and assessment activities at the Rico Site. Mr. Krablin would be expected to testify about environmental and compliance issues at the Rico Site in the 1980s prior to and after Crystal Oil's bankruptcy.
15. Erwin Sass -- Current ARCO Coal Employee, residing in the Denver, Colorado metropolitan area, but exact address unknown at this time. Mr. Sass is an engineer with key involvement in the water treatment facility at the Rico Site. Mr. Sass would be expected to testify about water quality concerns at the Rico Site and the history of how water quality concerns have evolved at the site and what actions have been taken to deal with the problems during the relevant period of time.
16. Robert Dent -- Retired Anaconda/ARCO Employee, residing in the Denver, Colorado metropolitan area, but exact address unknown at this time. Mr. Dent served in the Health, Safety & Environmental Department and was actively involved in permitting and environmental assessment activities at the Rico Site at the time of the conveyance and in the 1980s. Mr. Dent would be expected to testify concerning permitting and environmental assessment activities at the Rico Site which issues impact each of the claims at issue.
17. Don Cameron -- Retired Anaconda Employee, retired in Colorado, but present address unknown at this time and presumed remaining in Colorado. Mr. Cameron was involved with permitting and construction matters and is familiar with the Rico Site.
18. John King -- Retired Anaconda Employee, residing in Kentucky. Mr. King worked in the geology department for Anaconda and was involved in geological surveys at the Rico Site. Mr. King would be expected to testify as to the results of such surveys and their implications for current environmental issues at the Rico Site.
19. Theo Polasek -- Retired Anaconda/ARCO Employee, residing in Texas. Mr. Polasek was involved with negotiating the sale of the Rico Site for Anaconda. Mr. Polasek would be expected to testify

about the intent of the parties concerning the disputed provisions cited by plaintiffs and to explain that these provisions covered only the NPDES permitting problems occurring at the time of closing.

20. Pete Haller -- Former Anaconda/ARCO Employee, residing in Washington. Mr. Haller was an attorney covering environmental legal issues. Mr. Haller would be expected to testify about various environmental issues and the implication of such matters at the Rico Site in the 1980s.
21. Art P. O'Hayre -- Retired Anaconda Employee, residing in the Denver, Colorado metropolitan area, but exact address unknown at this time. Mr. O'Hayre worked as a hydrologist at the Rico Site and would be expected to testify about hydrological issues at the Rico Site and how the area hydrology impacts past and current environmental concerns at the site.
22. Eugene Tidball -- Retired Anaconda/ARCO Employee, residing in Boulder, Colorado, but exact address unknown at this time. Mr. Tidball served as an attorney in the legal department and was involved with various Rico Site issues in the 1980s. Mr. Tidball would be expected to testify about the evolution of environmental issues at the Rico Site during this period.
23. David M. Arnolds -- Former Anaconda Employee, Current ARCO Coal Co. Employee, residing in the Denver, Colorado metropolitan area, but exact address unknown at this time. Mr. Arnolds is an attorney for ARCO and handled land matters, including issues arising at the Rico Site, in the 1980s. Mr. Arnolds would be expected to testify concerning Rico Site ownership and land issues.

Consultants at the Rico Site:

24. Travis Hudson -- Titan Environmental Corporation, 7939 E. Arapahoe Road, Suite 230, Englewood, Colorado 80112. Mr. Hudson is a principal member of the Rico Site voluntary cleanup proposal team. Mr. Hudson would be expected to testify concerning development of the engineering aspect of the Rico Site cleanup as well as to provide background information on environmental issues at the Rico Site and the need for remediation work. Mr. Hudson would also be expected to testify about the cost efficiency and effectiveness of the proposed voluntary cleanup as well as costs associated with the cleanup.

25. Paul Bergstrom -- Titan Environmental Corporation, 7939 E. Arapahoe Road, Suite 230, Englewood, Colorado 80112. Mr. Bergstrom has played an integral role on the Rico Site voluntary cleanup proposal team in developing cleanup strategies and alternatives. In addition to providing background information on environmental conditions and issues at the Rico Site, Mr. Bergstrom would be expected to testify about the rationale for the current cleanup strategy and the scope of the proposal as well as the development and submission of the voluntary cleanup proposal application to the State of Colorado.
26. W. Roger Hail, C.E.G. -- ESA Consultants Inc., 2637 Midpoint Drive, Suite F, Fort Collins, Colorado 80525. Mr. Hail is the Project Principal in charge of creating and compiling the Colorado Voluntary Cleanup Applications ("VCUP") pursuant to the Colorado Voluntary Cleanup and Redevelopment Act ("VCRA"). Mr. Hail would be expected to testify about the VCUP and VCRA process, the unique cleanup aspects of historic mining sites, including the Rico Site, the purpose and scope of the Rico Site cleanup and related topics.
27. Edmund J. Schneider, P.G. -- ESA Consultants Inc., 2637 Midpoint Drive, Suite F, Fort Collins, Colorado 80525. Mr. Schneider is the Project Manager for the Colorado Voluntary Cleanup Applications who would be expected to testify about the VCUP process, the need for remediation work at the Rico Site, cost efficiency of the cleanup proposals and specific water quality issues associated with the mining tailing piles, particularly at the Rico-Argentine tailing piles, and the evolution of water quality issues at the Rico Site.
28. Thomas E. Gast -- Environmental Management Services Company, 2301 Research Blvd., Suite 103, Fort Collins, Colorado, 80526. Mr. Gast has been involved with environmental site assessment work at the Rico Site and has been involved in permitting activities associated with the current cleanup.
29. Steve Anderson -- Anderson Engineering, Salt Lake City, Utah. Mr. Anderson has had active involvement in remediation activities at the Rico Site as a member of the Rico cleanup team. Mr. Anderson has helped to plan and engineer the current cleanup proposal and would be expected to testify concerning the scope and necessity of the planned cleanup as well as to issues of specific contamination concerns and the sources of such contamination.

Colorado State Agency Officials:

30. Jeff Deckler -- Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80222. Mr. Deckler is a Program Manager at CDPHE with oversight over activities at the Rico Site, and he would be expected to testify generally about the Colorado voluntary cleanup program and the state's goals in implementing and guiding this program as well as more specific information concerning the interplay between the VCUP and water quality issues at the Rico Site. Mr. Deckler would be expected to testify about the critical distinctions between current cleanup activities at the Rico Site compared to the water quality problems addressed in the contract between Crystal Exploration and Anaconda. Mr. Deckler would also be expected to testify concerning the level and scope of activity by state regulatory agencies at the Rico Site prior to 1986 which directly relates to determining ARCO's level of knowledge of potential CERCLA liability at the Rico Site prior to Crystal Oil's bankruptcy.
31. Mark Walker -- Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80222. Mr. Walker is a key contact on the VCUP process and would be expected to testify to the level of cleanup required by Colorado at the Rico Site, Colorado's concerns with mining site cleanups and to other aspects of the Rico Site cleanup.
32. Robert Shukle -- Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80222. Mr. Shukle has been involved with water quality issues for the State of Colorado for many years. In addition to testifying to aspects of the voluntary cleanup proposed for the Rico Site, Mr. Shukle would be expected to testify concerning the history of the NPDES permit at issue in the conveyance contract which is a subject of one of the claims between Crystal Exploration and Anaconda as well as the scope of such permit and the evolution of Colorado water quality issues at this site. Mr. Shukle's years of involvement in Colorado water quality issues would provide tremendous insight on the relation of water quality and permitting to the claims raised by Crystal and Crystal Exploration.
33. Jim McArdle -- Colorado Office of State Engineer, Mined Land Reclamation Board, 1313 Sherman St., Room 821, Denver, Colorado 80203. Mr. McArdle has years of experience with reclamation at Colorado mining sites and would be expected to

testify concerning specific Colorado reclamation issues associated with mining sites and the Rico Site.

34. Jim Herron -- Colorado Office of State Engineer, Mined Land Reclamation Board, 1313 Sherman St., Room 821, Denver, Colorado 80203. Mr. Herron has experience with Colorado mining reclamation issues and would be expected to testify concerning Colorado reclamation requirements and achieving these goals through the voluntary cleanup process.

Federal Regulatory Agency Officials Located in Colorado:

35. Nancy Mangone -- U.S. Environmental Protection Agency, Regional Office, 999 18th St., Denver, Colorado. Ms. Mangone, EPA counsel, has been integrally involved in determining how the Colorado Voluntary Cleanup and Redevelopment Act and CERCLA will interplay and coexist. Ms. Mangone would be expected to testify concerning how a cleanup under VCRA interacts with CERCLA and how costs incurred in a VCRA cleanup are recoverable in accordance with CERCLA.
36. Pat Smith -- U.S. Environmental Protection Agency, Regional Office, 999 18th St., Denver, Colorado. Ms. Smith serves as an EPA CERCLA program coordinator for Region VIII of the EPA. Ms. Smith would be expected to testify concerning EPA's evolving interest in and knowledge of conditions at the Rico Site which impacts plaintiffs' bankruptcy claim, and to testify to cleanup requirements at the Rico Site and recovery of cleanup costs in accordance with CERCLA.
37. Greg Oberley -- U.S. Environmental Protection Agency, 999 18th St., Denver, Colorado. Mr. Oberley served as the EPA Site Assessment Manager for the Rico Site Field Sampling Plan for Expanded Site Inspection, dated July 25, 1995. Mr. Oberley would be expected to testify as to the scope and findings of this report which implicates the need for the current cleanup and may go to establishing ARCO's level of knowledge on whether the Rico Site was subject to CERCLA liability in 1986.
38. Mike Znerold -- U.S. Forest Service, 100 North 6th, Durango, Colorado. Mr. Znerold acts as the District Ranger for the San Juan National Forest and would be expected to testify on behalf of the Forest Service as a landowner and potentially responsible party at the Rico Site.

Federal Agency Consultants:

39. T.F. Staible -- URS Consultants, Inc., 1099 18th St., Suite 700, Denver, Colorado 80202. Mr. Staible was the Program Manager for two reports prepared on behalf of EPA for the Rico Site, including the Site Inspection Prioritization dated October 11, 1994 and the Rico Site Field Sampling Plan for Expanded Site Inspection, dated July 25, 1995. Mr. Staible would be expected to testify about the scope, purpose and findings of these reports which outline issues identified by EPA at the Rico Site.
40. Michael V. Carr -- URS Consultants, Inc., 1099 18th St., Suite 700, Denver, Colorado 80202. Mr. Carr was the Project Manager for the EPA report on Site Inspection Prioritization dated October 11, 1994. Mr. Carr would be expected to testify concerning the methodology and results of this study and the extent to which such findings indicated a need for remediation activities at the Rico Site.
41. Barry Hayhurst -- URS Consultants, Inc., 1099 18th St., Suite 700, Denver, Colorado 80202. Mr. Hayhurst operated as Site Manager for the Rico Site Field Sampling Plan for Expanded Site Inspection, dated July 25, 1995. Mr. Hayhurst would be expected to testify concerning the methodology and results of this study and the extent to which such findings indicated a need for remediation activities at the Rico Site.

Rico, Colorado town developers and landowners -- the following listing of Colorado citizens likely to appear as witnesses and which may become involved in this action. As citizens of Colorado with few substantial or material ties outside of the state, most of these parties would not be subject to jurisdiction in Louisiana:

42. Stan Foster -- Manager of Rico Properties, L.L.C. and local landowner, 17 Glasgow Ave., Rico, Colorado 81332. Mr. Foster serves as the Manager of Rico Properties, L.L.C. which is a landowner at the Rico Site. As the current owner of areas of the Rico Site, Mr. Foster, representing Rico Properties, L.L.C., would be expected to testify concerning the voluntary cleanup process, evolving environmental issues at the Rico Site and the need for mitigation, and costs incurred relating to his property.
43. Wayne E. Webster -- President of Rico Development Corporation, Rico, Colorado. Mr. Webster serves as the President of the Rico Development Corporation which purchased the Rico Site from ARCO in 1986. As the current owner of significant areas of the

Rico Site, Mr. Webster, representing Rico Development Corporation, would be expected to testify concerning the voluntary cleanup process, evolving environmental issues at the Rico Site and the need for mitigation, and costs incurred relating to his property.

44. Eric Heil, Esq. -- Rico Town Attorney, 18 N. River St., Rico, Colorado 81332. The Town of Rico also owns property potentially impacted by Rico Site conditions, and Mr. Heil would be expected to testify about the voluntary cleanup process and the evolving relationship between the Town and the Rico Site.
45. Frieda Davis -- local landowner, Rico, Colorado. Ms. Davis, a resident of Rico, Colorado, owns land impacted by the historic mining activities in the area and would be expected to testify concerning the current cleanup proposal, costs incurred on her property and related matters.
46. Robert Hanock -- local landowner, Rico, Colorado. Mr. Hanock, a resident of Rico, Colorado, owns land impacted by the historic mining activities in the area and would be expected to testify concerning the current cleanup proposal, costs incurred on his property and related matters.
47. Max Sitton -- local landowner, Rico, Colorado. Mr. Sitton, a resident of Rico, Colorado, owns land impacted by the historic mining activities in the area and would be expected to testify concerning the current cleanup proposal, costs incurred on his property and related matters.
48. Laura Hannigan -- local landowner, Rico, Colorado. Ms. Hannigan, a resident of Rico, Colorado, owns land impacted by the historic mining activities in the area and would be expected to testify concerning the current cleanup proposal, costs incurred on her property and related matters.
49. Myron Jones -- local landowner, Rico, Colorado. Mr. Jones, a resident of Rico, Colorado, owns land impacted by the historic mining activities in the area and would be expected to testify concerning the current cleanup proposal, costs incurred on his property and related matters.

50. Margaret Matzick -- local landowner, Rico, Colorado. Ms. Matzick, a resident of Rico, Colorado, owns land impacted by the historic mining activities in the area and would be expected to testify concerning the current cleanup proposal, costs incurred on her property and related matters.
51. Val Truelsen -- local landowner, Rico, Colorado. Ms. Truelsen, a resident of Rico, Colorado, owns land impacted by the historic mining activities in the area and would be expected to testify concerning the current cleanup proposal, costs incurred on her property and related matters.
52. Deanna E. Truelson -- local landowner, Rico, Colorado. Ms. Truelson, a resident of Rico, Colorado, owns land impacted by the historic mining activities in the area and would be expected to testify concerning the current cleanup proposal, costs incurred on her property and related matters.

DOCUMENTS


ARCO's repository of documents pertaining to the Rico Site, including documents concerning the conveyance of the Rico Site from Crystal Exploration to Anaconda, evolving environmental conditions at the Site and matters related to the current voluntary cleanup at the Site in accordance with the Colorado Voluntary Cleanup and Redevelopment Act, resides in Denver, Colorado. The ARCO Rico Site files contain thousands of documents.

Each consultant listed above as a potential witness has documents pertaining to current and/or historic environmental conditions at the Rico Site or documents related to the current voluntary cleanup proposal. These documents reside in the Colorado offices of these consulting companies.

Each state and federal regulatory agency listed above, as well as the Town of Rico and Dolores County, has documents pertaining to current and/or historic environmental conditions at the Rico Site or documents related to the current voluntary cleanup proposal. These documents reside in the Colorado offices of these regulatory agencies.

Further affiant sayeth not.

IN WITNESS WHEREOF, I have executed this affidavit on the 16th day of April, 1996.


Lary D. Milner

STATE OF COLORADO)
CITY AND) ss.
COUNTY OF DENVER)

Subscribed and sworn to before me this 16th day of April, 1996.

Witness my hand and official seal.

My commission expires: 2/15/97


Notary Public